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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,469	03/01/2004	Fayez Zakaria	93249pus	2017
6431 7590 11/15/2007 LANG MICHENER LLP BCE PLACE SUITE 2500, 181 BAY STREET TORONTO, ON M5J 2T7 CANADA			EXAMINER TRAN, HANH VAN	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 11/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/788,469	Applicant(s) ZAKARIA ET AL.	
	Examiner Hanh V. Tran	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/7/2007 & 4/2/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,8-44 and 47-110 is/are pending in the application.
- 4a) Of the above claim(s) 11,35-39,60-73 and 92-108 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8-10,12-34,40-44,47-59,74-91,109 and 110 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/2/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 4/2/2007 and 8/7/2007.

Election/Restrictions

2. Claims 11, 35-39, 60-73, and 92-108 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/7/2007.

3. In regard to claims 109-110, the examiner is in agreement with applicant's assertion that these claims are drawn to invention I of a retail merchandising apparatus.

Specification

4. The abstract of the disclosure is objected to because it includes legal phraseology such as "means". Correction is required. See MPEP § 608.01(b).

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Drawings

6. The drawings were received on 4/2/2007. These drawings are not acceptable. More specifically, there is nothing in the disclosure which would support the proposed drawing correction to Fig 11 of the "self-levelling" feet having said particular structures shown therein.

7. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitation in claim 90, line 4 of "the apparatus is mounted on a shelf" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claim 90 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. More specifically, the limitation on line 4 of the apparatus being mounted on a shelf is not properly disclosed in the original disclosure.

Claim Rejections - 35 USC § 103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 1-2, 4-6, 8-10, 12-34, 40-44, 47-54, 74-78, 83-91, and 109-110 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE3705322 to Mehlinger in view of USP 5,310,063 to Skolasinski and USP 6,079,560 to Champion.

Mehlinger discloses a retail merchandising apparatus comprising all the elements recited in the above listed claims including, such as shown in Fig 1-2, a pallet support means comprising a planar shelf, lifting means connected to the pallet support means for moving the support means between a lowered position and a raised position relative to a floor, control means for selectively actuating the lifting means, an open-topped housing accommodating the pallet support means and lifting means mounted therein. The differences being that Mehlinger does not disclose the housing comprising a plurality of upstanding housing walls comprising four housing walls each having an inner and outer surface, the at least one outwardly directed housing face comprising four outwardly directed housing faces, each carrying display means being a display panel associated with the housing for placing a promotional message, said display panel of either rectangular or square mounted on said outer surfaces of said housing walls by various means, the promotional message is embodied in either a printed medium or a poster having holographic image imprinted thereon, a frame for mounting of the display panel having various structures, a closure member for the housing walls of either a latch, a hook-and-eye, the housing having various polygonal shapes, the lifting means being a scissors lift.

Skolasinski teaches the idea of providing a merchandising apparatus comprising a housing having a plurality of upstanding walls comprising four housing walls and

having lifting means operatively connected to a pallet support means for moving the pallet support means between a lowered position and a raised position, such as shown in Fig 6-9, for ease of assembly to receive and permit aesthetic display of various merchandise. Champion teaches the idea of providing a retail merchandising apparatus comprising a housing having a plurality of upstanding walls comprising four housing walls, the at least one outwardly directed housing face comprising four outwardly directed housing faces, each carrying display means comprising a plurality of display panels mounted on the outer surfaces of said upstanding housing walls, a closure member of hook-and-loop; wherein the structure comprises advertising indicia for advertising purpose. In view of the teachings of Skolasinski and Champion, it would have been obvious to modify the structure of Mehlinger by providing the merchandising apparatus with a plurality of upstanding housing walls comprising four housing walls each having an inner and outer surface, the at least one outwardly directed housing face comprising four outwardly directed housing faces, each carrying display means comprising a plurality of display panels mounted on the outer surfaces of said upstanding housing walls for ease of assembly to receive and permit aesthetic display of various merchandise, as taught by Skolasinski, and display means is a display panel associated with the housing for placing a promotional message, said display panel of either rectangular or square mounted on said outer surfaces of said housing walls by various means for advertising purpose, as taught by Champion, since the references teach alternate conventional merchandise apparatus structure, thereby providing structure as claimed. In regard to the promotional message being various medium and

mounted to the housing walls by various mounting means, the examiner takes the position that it is well known in the art that promotional message can be of various medium and being mounted by various mounting means. In regard to the lifting being a scissors lift, the examiner takes the position that it is well known in the art to use a scissors lift including hydraulic or pneumatic, or mechanical drive means. In regard to claims 88-90, it would have been obvious that Mehlinger, as modified, can be used at various locations.

13. Claims 55-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehlinger, as modified, as applied to claims 1 and 92 above, and further in view of USP 6,769,368 to Underbrink et al.

Mehlinger, as modified, discloses all the elements as discussed above except for ramp means associated with the pallet support means having a ramp member disposed in sliding relation with the shelf, a slot defined between the shelf and the lifting means for locating the ramp member in the stowage position, a beveled lip attached to and projecting from an edge of the shelf to thereby permit a pallet truck carrying a loaded to be rolled onto the shelf and the floor.

Underbrink teaches the idea of providing a pallet comprising a ramp means associated with a pallet support means having a ramp member disposed in sliding relation with a shelf, a slot defined between the shelf and the support means for locating the ramp member in the stowage position, a beveled lip attached to and projecting from an edge of the shelf to thereby permit a pallet truck carrying a loaded to be rolled onto the shelf and the floor for the purpose of facilitate loading of merchandise onto the

pallet. In view of the teachings of Underbrink, it would have been obvious to modify the structure of Mehlinger, as modified, by providing ramp means associated with the pallet support means having a ramp member disposed in sliding relation with the shelf, a slot defined between the shelf and the lifting means for locating the ramp member in the stowage position, a beveled lip attached to and projecting from an edge of the shelf to thereby permit a pallet truck carrying a loaded to be rolled onto the shelf and the floor for the purpose of facilitate loading of merchandise onto the pallet, as taught by Underbrink, since both teach alternate conventional pallet structure, used for the same intended purpose supporting merchandise thereon, thereby providing structure as claimed.

14. Claims 79-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehlinger, as modified, as applied to claim 1 above, and further in view of USP 4,741,414 to Claassen.

Mehlinger, as modified, discloses all the elements as discussed above except for the shelf has four sides, the pallet support means including raised skirt member extending peripherally about each outermost edge of three contiguous sides of the shelf, the outermost edge of the remaining side being free of obstruction.

Claassen teaches the idea of providing a pallet with a pallet support means, a lifting means, a shelf; wherein the shelf has four sides, the pallet support means including raised skirt member extending peripherally about each outermost edge of three contiguous sides of the shelf, the outermost edge of the remaining side being free of obstruction in order to facilitate placement of a loaded pallet onto the shelf. In view of

the teachings of Claassen, it would have been obvious to modify the structure of Mehlinger, as modified, by providing the shelf with four sides, the pallet support means including raised skirt member extending peripherally about each outermost edge of three contiguous sides of the shelf, the outermost edge of the remaining side being free of obstruction in order to facilitate placement of a loaded pallet onto the shelf, as taught by Claassen, since both teach alternate conventional pallet supporting structure, thereby providing structure as claimed.

15. Claims 81-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehlinger, as modified, as applied to claim 1 above, and further in view of USP 4,741,414 to Claassen.

Mehlinger, as modified, discloses all the elements as discussed above except for the shelf has four sides, the pallet support means including raised skirt member extending peripherally about each outermost edge of three contiguous sides of the shelf, the outermost edge of the remaining side being free of obstruction.

Claassen teaches the idea of providing a pallet with a pallet support means, a lifting means, a shelf; wherein the shelf has four sides, the pallet support means including raised skirt member extending peripherally about each outermost edge of three contiguous sides of the shelf, the outermost edge of the remaining side being free of obstruction in order to facilitate placement of a loaded pallet onto the shelf. In view of the teachings of Claassen, it would have been obvious to modify the structure of Mehlinger, as modified, by providing the shelf with four sides, the pallet support means including raised skirt member extending peripherally about each outermost edge of

three contiguous sides of the shelf, the outermost edge of the remaining side being free of obstruction in order to facilitate placement of a loaded pallet onto the shelf, as taught by Claassen, since both teach alternate conventional pallet supporting structure, thereby providing structure as claimed.

Response to Arguments

16. Applicant's arguments filed 4/2/2007 have been fully considered but they are not persuasive. In response to applicant's argument on page 42 that it would not have been obvious to combine the references because Mehlinger is drawn to a refrigerated cabinet, the examiner respectfully takes the position that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Further, each reference teaches the idea of using a pallet structure in a product display apparatus.

17. In response to applicant's argument on page 43 that the advertising medium of Mehlinger is dynamic, thus teaches away from advertising display surfaces of a more static structure, the examiner respectfully would like to point out that Mehlinger is the primary reference, NOT the secondary reference.

18. In response to applicant's argument on page 44 that one ordinary skill in the art would not attempt to "extricate the skid lifting device of Mehlinger from the sturdy enclosure of its refrigerated cabinet", the test for obviousness is not whether the

features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Further, the examiner respectfully would like to point out that Mehlinger is the primary reference, NOT the secondary reference.

19. In response to applicant's argument on page 44 that Champion is "quite apart from the teaching uses in refrigerated contexts", it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, each of the cited references is drawn to a product display device. Further, a person of ordinary skill in the art has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

20. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, since each of the cited references is drawn to a product display device, they are in the knowledge generally available to one of ordinary skill in the art.

Conclusion

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT *HVT*
November 13, 2007

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

